IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 29 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JUBERKHAN DOSTMOHAMMAD PATHAN - Applicant(s)

Versus

THE DEPUTY COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :

MS BANNA S DUTTA for Applicant(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
PUBLIC PROSECUTOR for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 27/01/2006

ORAL JUDGMENT

1. The petitioner has filed this petition under Article 226 of the Constitution for quashing and setting aside the order dated 25.7.05 passed by the Deputy Commissioner of Police extending the

petitioner for a period of two years under provisions of Bombay Police Act. The petitioner has also challenged the appellate order passed by the Deputy Secretary somewhere in December 2005 affirmed the same in this behalf. The petition was filed on 2.1.06. When the matter was placed for hearing on 10.1.05 this Court issued Rule returnabe on 24.1.06. In view of the aforesaid facts and circumstances and on behalf of the respondent Mr. Pujari learned APP appears for all respondent and in view of the same and with the consent of the parties the matter is taken for final hearing in this behalf.

2. Mrs. Banna Dutta learned advocate for the petitioner stated that there are several grounds but she will urge only one ground . The petitioner has been served with the notice of externment on 5.5.01 under section 59 of the Bombay Police Act. The petitioner has filed intial representation on 27.5.05 and thereafter the petitioner filed another reply to the show cause notice on 26.7.05 and also written final submissions were made by the petitioner. Thereafter the authority has passed the impugned order of detention dated 25.7.05 only the authority

has not given any reason why there is delay in passing the order. The petitioner has also raised this ground before the appellate authority also. However, the appellate authority has also confirmed the aforesaid order without considering the said ground in this behalf.

3. On behalf of the respondent Mr Pujari has stated that the affidavit has not been filed but he has originally filed and even from the perusal of the file there is nothing on record to show that why the authority has passed the order in-ordinate delay or unexplained delay in this behalf. In view of the same this Court has not insisted though the affidavit to be filed by respondent in this behalf. The learned advocate has relied upon the judgement of this Court in the case of **Dilaji Bharthaji Vihol Vs.Deputy Commissioner of Police & 1 in Special Criminal Application 1451/05 decided on 1.12.2005** where this Court (coram : K.M.MEHTA, J) the authority has not explained delay in passing the order. Therefore, unexplained delay is fatal to the case and therefore order of externment deserves to be quashed and set aside. In view of the aforesaid judgement of this

Court and in view of the reasoning and conclusion in the said judgement this matter requires to be allowed the order of externment is to be quashed and set aside the order of externment passed by the authority as well as appellate authority in this behalf.

4. The impugned order of externment dated 25.7.05 passed by the Deputy Commissioner of Police, Zone '6' Ahmedabad city is ordered to be quashed and set aside. Impugned order dated 6.11.05 passed by the Deputy Secretary, Home Department, Sachivalaya, Gandhinagar confirming the order of externment is also ordered to be quashed and set aside. Rule is made absolute. Direct service is permitted.

(K.M.MEHTA, J)

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